

**STATEMENT OF PATRICK M. CLAWSON
ACTING PRESIDENT
MICHIGAN PROCESS SERVERS' ALLIANCE**

**RE: HB-4038
MICHIGAN SENATE JUDICIARY COMMITTEE
MARCH 24, 2015**

I am writing to you in opposition to HB-4038 in my capacity as the Acting President of the Michigan Process Servers' Alliance (MPSA). Our organization represents process servers and court officers across Michigan. MPSA members serve civil process concerning evictions on a daily basis and have long professional experience in doing so.

The proposed bill would allow a "Notice to Quit/Termination of Tenancy" (SCAO Form DC 100c) to be served on a tenant by electronic mail, if authorized in a written agreement.

The stark fact is that electronic mail delivery is not yet reliable enough to ensure that service of initiating legal process has been successfully completed and that due process notice requirements have been met.

The reason for this is that e-mail service providers are constantly adjusting their technical delivery parameters to both block spam and to update for new technologies. The increasing use of spam filters by electronic mail providers such as Comcast, AT&T, Verizon is having a demonstrable effect on the ability to successfully deliver e-mail.

A research paper by Microsoft engineers states:

"The Internet SMTP-based email system does not guarantee the timely or even eventual delivery of messages. Email can sometimes be delayed by hours or days, or even fail to be delivered at all to the recipient(s). The email sender isn't always notified when such failures occur. Such silent failures, even if rare, impose a high cost on users in terms of missed opportunities, lost productivity, or needless misunderstanding (notwithstanding the purported social "benefits of plausible deniability offered by email loss)....."

Email could be delayed or lost because of overload, failure (e.g., disk crash), or upgrade of a server along the end-to-end, store-and-forward path from the sender to the recipient. Overload or failure is sometimes triggered by a spurt in the volume of email because of spam or the spread of a virus. Furthermore, the widespread use of spam filters also contributes to email loss by sometimes causing legitimate emails to be discarded as spam. For example, from conversations with the IT staff at a major corporation, we have learned that an estimated 90% of incoming email is dropped even before these hit the user mailboxes or junk mail folders, typically to reduce storage and processing costs for the mail server. Given such an extensive discarding of email, it is hardly surprising that some legitimate email might be caught up in it."

(Source: <http://research.microsoft.com/en-us/people/sagarwal/hotnets05.pdf>)

Return Path, the leading e-mail marketing consulting firm, has for several years published annual studies on the reliability of e-mail inbox delivery. Its 2014 report, the latest available, states:

"For every six commercial messages sent worldwide, one never reaches the subscriber's inbox. It's diverted to a spam folder or missing altogether, probably blocked by the mailbox provider."

(Source: Inbox Placement Report, Return Path Benchmark Report 2014)

Return Path has made similar findings in each of its reports for the past five years.

A recent report by Experien, a national credit bureau, stated that **only 76.5 percent of e-mails sent actually reached customer e-mail inboxes.**

Some companies, such as RPOST and DOCSMIT, now offer specialized new services that provide "registered" or "certified" e-mail delivery. This form of e-mail provides independent verification of both transmission and receipt of e-mail. The cost of these services is low. RPOST charges as little as \$0.39 to send a secured e-mail. If the Legislature deems it wise to allow pre-eviction notices to be delivered via e-mail, then HB-4038 should be amended to permit only the use of registered or certified e-mail services to protect due process rights of defendants.

However, even using these specialized e-mail services does not guarantee delivery of legal notice to a defendant. The defendant may have moved, changed their e-mail address, experienced computer failure, or had their Internet service disconnected for non-payment. At the present state-of-the-art of the technology, the use of e-mail alone is not an adequate method of providing service of process.

The Michigan Process Servers Alliance believes that e-mail be used as the means of service of originating process documents that initiate a legal proceeding only in the most extreme cases, such as where a defendant is crossing state or national lines to evade service of process. Even then, it should be used only in conjunction with and to supplement other means of service of process.

The personal service of Notices to Quit and other legal process remains vitally important to protecting individual due process rights. It is critically important that existing service of process procedures defined by statute and court rules are followed to provide proper due process to litigants so they may defend their interests in court. The proposed bill in its current form does not contain measures proper to protect those vital due process rights.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'P. Clawson', with a large, sweeping flourish underneath.

PATRICK M. CLAWSON
PO Box 470
Flint, MI 48501-0470
Phone: (810) 730-5110
Fax: (810) 963-0160
E-mail: patrickclawson@comcast.net